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CHARLES ELMORE

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1928

No. 60

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and THE CITY OF LOS ANGELES,
*Appellants,*

vs.

LOS ANGELES RAILWAY CORPORATION (a corporation),
*Appellee.*

## MOTION TO ADVANCE CAUSE.

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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1928

No. 801

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and THE CITY OF LOS ANGELES, *Appellants,*

vs.

LOS ANGELES RAILWAY CORPORATION (a corporation), *Appellee.*

## MOTION TO ADVANCE CAUSE.

All parties herein, Railroad Commission of the State of California, City of Los Angeles, and Los Angeles Railway Corporation, join in moving this Honorable Court to advance this cause for hearing as near the beginning of the October Term of 1929 as may be convenient. In support of this motion, and in accordance with the requirements of Subdivision 3 of Rule 20 of the Rules of this Honorable Court, the following brief statement of the matter involved and

of the reasons for this application are respectfully submitted.

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### FACTS AND ISSUES.

The appellee Los Angeles Railway Corporation is a public utility street railroad corporation operating in the City of Los Angeles and adjacent territory. On November 17, 1926, appellee filed with appellant Railroad Commission an application for increase in its rates from the then prevailing flat rate of five cents to a basic fare of seven cents cash or four single fare tokens for twenty-five cents. After conducting exhaustive hearing, appellant Railroad Commission issued its order No. 19,521 denying the application for rate increase, and on April 23, 1928, the Commission denied the Company's application for a rehearing on said order No. 19,521.

Thereafter on June 22, 1928, appellee filed with the District Court of the United States in and for the Southern District of California, Southern Division, a bill of complaint against appellant Railroad Commission praying that the existing five cent fare be declared confiscatory, that said Commission order No. 19,521 be declared void, that said Commission and its officers be enjoined from enforcing or attempting to enforce said order, and for certain other general relief. Upon the filing of said complaint, motion was made by appellee for interlocutory injunction under United States Code, Title 28, Section 380 (formerly 266 Judicial Code). In the bill of complaint and motion it was urged that the then prevailing five cent rate was con-

fiscatory and that said order of the Commission denying the rate increase deprived appellee of its property without due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

The City of Los Angeles, on motion duly made, was permitted to intervene in said proceeding as party defendant. Both defendants, City of Los Angeles and Railroad Commission of California, thereupon moved to dismiss said bill of complaint for want of equity, and for various other reasons. Separate answers were filed by said defendants denying all material allegations, and affirmatively alleging that plaintiff company was operating under certain franchises granted by the City and County of Los Angeles, wherein the rate of fare was fixed at five cents per ride; that the said franchises constituted contracts binding upon said plaintiff, and that said Federal Court was without jurisdiction to grant the relief sought.

Thereafter the said District Court, constituted as provided by United States Code, Title 28, Section 380, heard said matters and evidence was introduced by all parties. At the conclusion of said hearing it was stipulated by all parties that the Court, in addition to ruling on said motions, might finally determine all issues involved in the action on the record then before it. Thereafter the said statutory three judge Court issued its opinion, and on October 1, 1928, issued its decree allowing permanent injunction. In said opinion the Court found the said order of the Railroad Commission to be void on the ground that it deprived plaintiff of its property without due process of law in

violation of the Fourteenth Amendment to the Federal Constitution, and on that ground issued its permanent injunction enjoining the enforcement of said Commission order.

As a condition of the injunction the Court in its decree authorized plaintiff from and after the entry of the injunction, and until final determination of the cause by the United States Supreme Court, to charge and collect not in excess of a basic fare of seven cents cash or four single fare tokens for twenty-five cents, all as prayed for in the bill of complaint of plaintiff, and directed that plaintiff issue to each passenger paying such fares a refund ticket or coupon for the excess between the former five cent fare and the rate of fare paid by such passenger. Under said decree the plaintiff was required to file with the Clerk of the Court a surety bond in the amount of $50,000 conditioned that if it should ultimately be held by the Supreme Court of the United States that the new rates are unlawful, the excess represented by refund tickets or coupons will be refunded by plaintiff upon presentation of such coupons.

Defendants and appellants filed with said Court petition for appeal on October 2nd, 1928, and on said date order issued allowing appeal. Bonds on appeal, and a joint assignment of errors were filed by appellants on October 2nd, 1928.

On appeal appellants will urge that the District Court erred in the various particulars enumerated in the assignment of errors.

The time within which to file the record and docket the cause in the Supreme Court of the United States was extended from time to time by the Federal District Court until April 15, 1929. On April 1st, the record in the matter was filed and docketed by the Clerk of this Honorable Court.

Pursuant to the requirements of Subdivision 9 of Rule 13 of the Rules of this Honorable Court, appellants filed with the Clerk of the Court on April 1st, 1929, designation of points intended to be relied upon, and parts of the record to be printed. Appellants have prepared the jurisdictional statement required by Rule 12 of the Rules of Court, and will file the same with the Clerk of Court prior to the filing of this motion to advance. Appellee Los Angeles Railway Corporation concedes that this Court is vested of jurisdiction to review the decree challenged by the appeal, and represents that prior to the filing of this motion to advance, will file with the Clerk of Court an express waiver of right to file statement in opposition to jurisdiction (Subdivisions 2 and 3 of Rule 12).

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GENERAL PUBLIC INTEREST.

The questions presented on this appeal are of vital interest to all parties to this proceeding, and to the citizens of the City of Los Angeles and Southern California. Between nine hundred thousand and one million passengers a day are carried over the lines of appellee Los Angeles Railway Corporation. By virtue of the decree in question the said company is now, and

at all times since October 21, 1928, has been collecting the increased rates authorized by the said decree of the Federal District Court. If said decree is reversed those passengers who have paid the increased fares will have refunded to them the difference between the increased fares and the five cent fare, and if said decree is affirmed the Company will be at liberty to use the additional revenue derived from the increased fares. It is evident that the public interest will be subserved by an early hearing of this appeal by this Honorable Court.

By reason of the existing public interest in this appeal we respectfully join in asking that this cause be advanced for hearing.

Dated, April 17, 1929.

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